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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1188 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 Yes
2 to 5 No

OM SHIV DYESTUFF PVT. LTD.

Versus

GUJARAT POLLUTION CONTROL BOARD

Appearance:
MR MIHIR JOSHI for SINGHI & BUCH ASSO. for Petitioners
MR SN SHELAT, ADDL. ADVOCATE GENERAL with MR ND GOHIL for Respondent No. 1
MR AJ DESAI, ASST. GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 17/06/1999

ORAL JUDGEMENT (per R. Balia, J.)

Rule. Service of rule is waived by learned

counsel for the respondents.

Heard on merits.

2. We may first notice facts in brief leading to this petition. The petitioner, desirous of establishing an industrial unit for manufacturing H-Acid, Vinyl Sulphone, Acetanilide and Sodium bi-sulphate, which are dye intermediate products, made an application to Gujarat Pollution Control Board, for issuing it Location Clearance/No Objection Certificate for the manufacture of aforesaid items at the site in question. It is situated at Plot No. 156-161P, Village: Dhanot, Taluka: Kadi, District: Mehsana. The location clearance/no objection certificate was sought on the assertion that the manufacture was on zero discharge effluent technology through incinerator of 2500 L/hr at 800 C. This application was rejected by order dated 30.4.1998 by the Board, inter alia, on the grounds that no safe disposal system is available in the land locked area, all are specified products and are likely to create environmental pollution in respect to water pollution, air pollution and solid hazardous waste and site is not suitable for such specified products. Against this, an appeal was preferred on 25.5.1998 u/s 31 of Air (Prevention and Control of Pollution) Act, 1981 before the Appellate Authority, Gandhinagar. The appeal was rejected, in the first instance, on 8.10.1998 on the ground that consolidated appeal against Water Act as well as Air Act were not maintainable. Thereafter, on 23.11.98, independent appeal was filed again before Appellate Authority under the Air Act, 1981. During this period, by order dated 5.9.98, the Board granted permission to the petitioner for manufacture of Acetanilide and sodium Bi-sulphite, by treating it to be a manufacture resulting in zero discharge of effluent. By order dated 21.1.99 the Appellate Authority rejected the appeal by holding that the order refusing to issue No Objection Certificate was advisory in character and was not an order under the Act, hence it was an order which could be subject to appeal u/s 31. Hence, this petition challenging the orders dated 21.1.99 passed in the appeal as well as order dated 30.4.99 passed by the Board rejecting the application in the first instance.

3. Learned Counsel for the petitioner has urged, in the first instance, that the order rejecting application for location clearance/no objection certificate to manufacture the products in question is an order contemplated u/s 21 of the Act of 1981. Merely because the application uses term "location clearance" or "no

objection certificate", the application cannot be anything else but application for seeking permission to establish industry on a particular piece of land. The Appellate Authority was not right in taking hyper-technical view of the expressions for the purpose of sec. 31 and order made by the State Board under the Act. For this reason alone, according to learned counsel for the petitioner, the appellate order suffers from error apparent on the face of record and deserves to be set aside. It was further urged by learned counsel that even assuming that the order dated 30.4.98 passed by the Board was not an order u/s 21 of the Act and not appealable, then the original order itself suffers from patent error inasmuch as it appears to have been made without application of mind to the relevant consideration. It was pointed out that the applicant had made application on the basis that there shall be zero discharge of effluent and it has also given affidavit that in case there is any likelihood of effluent discharge or solid hazardous waste, the petitioner has necessary capability to treat and manage the same and contain the pollution within the permissible limits. The order dated 30.4.98 does not refer to these aspects at all. On the other hand, learned Addl. Advocate General appearing for the Board has supported both the orders.

4. Having given our anxious consideration, we are of opinion that the petitioner must succeed on both the contentions. Sec. 21(1) of the Air Act to the extent claimed by the present purposes reads as under:

> "(1) Subject to the provisions in this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in air pollution control area".

A perusal of the aforesaid provision goes to show that even establishing, much less the operation of a plant in in an air pollution control area, is prohibited until consent of the State Board is obtained before it is established. The provision has not made the Board a licensing authority for establishing or operating any industry in general. The provision has clear nexus to grant or refusal of such permission in relation to an area. Therefore any application for No Objection Certificate to establish or operate any industry in any area has to be viewed in that light. When a person desirous of establishing an industrial plant in an air pollution control area approaches the State Board for seeking its no objection certificate for the purpose or for location clearance, it amounts to an application for

seeking its permission to establish or operate the industrial plant in that area. Acceptance or refusal of such application, in our opinion, really falls u/s 21(1) of the Act and is an order made by the Board under the Act. Mere fact that the application is described as an application for no objection certificate or for location clearance certificate instead of making it an application for permission, in our opinion, makes no difference. Once, on considering the project submitted before the Board, the Board clears the area saying that it has no objection for establishing or operating an industrial plant, it does amount to giving permission by the Board to establish or operate an industrial plant in that area. It cannot be presumed that the Board which gives no objection certificate for establishing a plant on a site today will be entitled to say tomorrow it has not given permission to establish a plant there. We are therefore satisfied that the Appellate Authority clearly erred in not entertaining the appeal on merit and rejecting it on the technical ground that appeal is not maintainable merely because the application and the order made by the Board refers to the subject as 'no objection certificate'. We may point out that application does not merely caption the application for no objection certificate but it also uses expression as location clearance. In our opinion, that is sufficiently clear indication of the fact that application was for seeking permission to establish industry in the concerned plot.

5. In this connection we may usefully refer to observation made by this Court in Pravinbhai Jashbhai Patel & Anr. v. State of Gujarat & Ors., 1995 (2) G.L.R. 1210, wherein this Court while issuing directions in connection with a polluting industrial units engaged in textile processing has used expression 'no objection certificate/consent' as substitute for each other. For illustration, direction contained in para 135 A.I (v) the Court has said "those textile processing units using more than 25,000 litres of water per day shall suspend their operations unless they give primary and secondary treatment to their effluent and/or are able to achieve the G.P.C.B. norms and obtain NOC/Consent." Like expression has been used in para II, "electricity and water are required for sufficiently long time to enable the checking of the claim but till NOC/Consent is obtained, no permission should be given for commercial production."

6. It may be discerned that here prior permission has been used in contrast with NOC/Consent in connection with continued commercial production but not in

connection with establishing a new industry or put up a plant and operate which was established prior to commencement of the Act. The provisions of the Air Act concerns with the continued activity of existing plant or coming into existence of a new plant in the the area to which the Act applies without prior permission of the Board. Therefore, where the Board is called upon to exercise its duty to enquire whether to clear a location for the purpose of establishing an industry in question or not or is required to issue a no objection certificate in respect of establishing a new industry, in our opinion, the Board clearly discharges its function u/s 21 to grant or refuse permission for establishing or permitting an existing industrial unit to operate the plant in hat area. The order necessarily must be construed an order u/s 21 which follows and is appealable u/s 31.

7. That apart, we further find that, as noticed above, the contents of the order dated 30.4.98, while it states that the area is land locked area and there is no safe disposal system available, it does not take notice of the fact that petitioner has laid its claim on the basis of assertion that it is zero discharge unit. That is to say, there shall be no discharge of effluent which would require disposal. Another ground which has weighed with the Board is that all the products for which permission is sought are likely to create environmental pollution in respect of water pollution, air pollution and solid hazardous waste but it itself, in our opinion, cannot end the road to consider the application to grant or not to grant permission. It has to follow the consideration whether the industry is a pollution prone industry, whether it has capability to meet the requirement of dealing with effluent discharge or manage its hazardous waste for containing the pollution within the standard fixed by the Board for which the capability of the prospective manufacturer has to be measured. That exercise has apparently not been taken by the Board. In this connection we would again like to refer to the observation made by this Court in Pravin J. Patel's case (supra) where the Court has directed the State Government in the following terms:

> "The State is directed not to allow the establishment of any new polluting industry or to allow the expansion of any existing polluting industry without its first satisfying the G.P.C.B. and the State that it has the capability of the effluent meeting the G.P.C.B. norms".

This direction indicates the nature of enquiry that the Board is required to undertake while considering consent applications viz. the capabilities of the applicant to treat its effluent discharge to bring it within GPCB norms. This enquiry postulates enquiry into question whether industry is likely to discharge effluent or accumulate hazardous waste. In other words consideration of the fact whether the proposed industry or existing industry is one likely to discharge its effluent or is likely to be a zero discharge unit is relevant consideration. When a claim is laid that the new unit shall be a zero discharge unit, the enquiry in truth of such claim cannot be shut by ignoring the claim. If the answer is in the negative, it further requires consideration of capability of the unit to treat its effluent discharge to the norms set by GPCB. This exercise has not been undertaken by the Board while considering the pollution hazard that is likely to be caused on account of proposed manufacturing activities coming on site. It may not be out of place to mention here that after rejection of the application in toto, the Board itself has revised its view in respect of two of the products and granted permission by holding that no discharge of effluent likely is to take place by permitting manufacturing activities in respect of those two products.

8. We are therefore of the opinion that the order rejecting the application for location clearance/no objection certificate has been dealt with by the Board without application of mind to relevant considerations. It has been pointed out by learned counsel for the respondent-Board that the Board is entitled to take into consideration the policy evolved by the State for allowing chemical and other hazardous industries in order to have an effective pollution control system in the State. Undoubtedly, that too is a relevant consideration which the Board is entitled to take while deciding the application.

9. In the aforesaid circumstances, we quash both the impugned orders and direct the Board to decide the application of the petitioner afresh in accordance with law, within six weeks from the date of receipt of writ in the matter. We may clarify that no fresh equities shall be claimed for any acts done by the petitioner during this period.

Rule is made absolute with no order as to costs.

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